

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN LEWIS ALDRIDGE,

Defendant-Appellant.

UNPUBLISHED

April 21, 2011

No. 295864

Wayne Circuit Court

LC No. 09-014028-FC

Before: GLEICHER, P.J., and SAWYER and MARKEY, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment for the murder conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant's convictions arise from the shooting death of Clifford David Harrell at a drug house in Detroit. The prosecution's principal witness, Linda Pickett, testified that she was at the house at the time of the shooting. Pickett stated that she and Harrell were at the house when defendant, whom Pickett knew as "Little Black," arrived and that the three of them all smoked crack cocaine together. According to Pickett, after defendant answered a knock at the side door, she saw defendant turn around and fire a gun at Harrell as he was sitting on the couch. Pickett ran and hid upstairs where she heard a second gunshot. After 20 to 30 minutes, she felt that the floor was getting hot and smelled smoke, so she ran out of the house. At that point, the house was on fire. Pickett ran down the street screaming for help and an unidentified woman stopped to assist her and called the police.

After the fire at the house was extinguished, Harrell's body was found submerged in some water in the basement. The medical examiner determined that Harrell died from two gunshot wounds. Because of the fire damage, no physical evidence related to the shooting was recovered.

I. SUFFICIENCY OF THE EVIDENCE

Defendant argues through both appointed appellate counsel and in a pro se Standard 4 brief¹ that his convictions must be reversed and the charges dismissed because there was insufficient evidence to establish his identity as the person who committed the offenses. We disagree.

When reviewing the sufficiency of the evidence, this Court occupies the same position as the trial court to determine whether the evidence supported all elements of the charged crimes and allowed a jury to convict beyond a reasonable doubt. As such, the standard of review is de novo. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). An appellate court must determine whether the evidence, viewed in the light most favorable to the prosecution, was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant was guilty of the crimes charged. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). All conflicts in the evidence must be resolved in favor of the prosecution. *People v John T Williams, Jr*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Circumstantial evidence and any reasonable inferences that can be drawn from the evidence may be sufficient to prove the elements of the crime. *People v Abraham*, 234 Mich App 640, 656; 599 NW2d 736 (1999).

Neither appellate counsel nor defendant in his Standard 4 brief directly challenge the specific elements of the offenses. Instead, their arguments focus on the issue of identity. “[I]dentity is an element of every offense.” *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008). “The credibility of identification testimony is a question for the trier of fact that we do not resolve anew.” *People v Thomas Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Positive identification by a witness may be sufficient to support a conviction. *Id.*

Pickett testified that defendant was in Harrell’s house, smoking crack cocaine with herself and Harrell, and that defendant shot Harrell after defendant answered a knock at the door. Pickett’s testimony, if believed, was sufficient to establish defendant’s identity as the shooter. Although defendant contends that there were reasons to find that Pickett’s testimony was not credible, the credibility of her testimony was for the jury to decide, and this Court will not resolve it anew.

In his Standard 4 brief, defendant refers to additional evidence that was not presented at trial to support his sufficiency argument. In particular, he refers to a police statement by Tazette Tye, which defendant contends implicates someone else as the shooter. He further avers that testimony from the unknown woman who picked up Pickett and called the police would somehow assist in his defense, but he does not explain how. Because these arguments are not based on evidence actually presented at trial, they do not provide a basis for concluding that the evidence was legally insufficient.

¹ See Michigan Supreme Court Administrative Order 2004-6, standard 4, 471 Mich at cii.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

In his Standard 4 brief, defendant also argues that a new trial is required because defense counsel was ineffective. Because defendant did not raise an ineffective assistance of counsel issue in the trial court and this Court denied his motion to remand, our review of this issue is limited to errors apparent from the existing record. *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). To establish ineffective assistance of counsel, defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the representation so prejudiced defendant that he was denied a fair trial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994). Defendant must overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2d 315 (1991). To establish prejudice, defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Johnnie Johnson, Jr*, 451 Mich 115, 124; 545 NW2d 637 (1996). The burden is on the defendant to produce factual support for his claim of ineffective assistance of counsel. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

Defendant primarily argues that trial counsel was ineffective for failing to call or adequately question witnesses, and for failing to adequately prepare for trial. "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy, and this Court will not substitute its judgment for that of counsel regarding matters of trial strategy." *People v Marcus Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). This Court will not assess counsel's competence with the benefit of hindsight. *Matuszak*, 263 Mich App at 58. Defendant must overcome the strong presumption that his attorney exercised sound trial strategy. *Davis*, 250 Mich App at 368. "[T]he failure to call witnesses only constitutes ineffective assistance of counsel if it deprives the defendant of a substantial defense." *People v Dixon*, 263 Mich App 393, 398; 688 NW2d 308 (2004).

Counsel's failure to conduct a reasonable investigation can constitute ineffective assistance of counsel. *People v McGhee*, 268 Mich App 600, 626; 709 NW2d 595 (2005). A sound trial strategy is one developed based on investigation and supported by reasonable professional judgments. It is counsel's duty to make an independent examination of the facts, laws, pleadings, and circumstances involved in the matter and to pursue all leads relevant to the issues. *People v Grant*, 470 Mich 477, 486-487, 498-499; 684 NW2d 686 (2004).

Defendant first argues that defense counsel was ineffective for failing to call Tazette Tye as a witness. Tye gave a statement to the police in which she stated that a few days before Harrell was killed, he pulled a gun on someone known as "Black" during a dispute related to drugs. Tye described "Black" as a black male, 6'1" or 6'2," in his early 20s, and she provided the name of the street where he lived and his telephone number. Defendant argues that counsel was ineffective for not investigating whether "Black" was someone other than defendant who could have been responsible for shooting Harrell. We disagree.

First, the available record does not indicate that defense counsel failed to investigate the information provided by Tye. Absent such evidence, there is no basis for concluding that counsel's performance was objectively unreasonable. Second, defendant has not established a reasonable probability that Tye's testimony could have aided defendant's case. Defendant's

identity as the shooter was not based on his nickname of “Black” or “Little Black,” but rather on Pickett’s testimony that she was an eyewitness to the shooting and recognized defendant, whom she knew as “Little Black,” as the shooter. Defendant has not presented any evidence showing that further investigation of this matter would have yielded evidence that the person described by Tye was in fact someone other than defendant. Absent such a showing, there is no basis for concluding that defendant was deprived of a substantial defense. Accordingly, defendant has not shown that trial counsel was ineffective for not calling Tye or otherwise presenting evidence that someone else may have committed the offense.

Defendant next argues that counsel was ineffective for failing to call as a witness the woman who assisted Pickett while Pickett was running down the street yelling for help. Defendant also argues that counsel was ineffective for not subpoenaing the woman’s telephone records to determine whether the woman actually called the police. However, because the record indicates that the identity of this woman is unknown, and defendant has not made any showing that the woman’s identity could have been discovered with reasonable diligence, there is no basis for concluding that defense counsel could have called her as a witness even if he wanted to. Further, without establishing her identity, counsel could not have subpoenaed her telephone records. Thus, defendant has not shown that counsel was ineffective in this regard.

Next, the record does not support defendant’s argument that defense counsel performed deficiently by failing to impeach Pickett’s testimony at trial. The record discloses that counsel attempted to impeach Pickett by questioning her about her drug use and drug addiction, as well as other discrepancies involving her physical description of defendant and the color of the shooter’s gun. Thus, there is no merit to this claim.

Defendant also argues that defense counsel should have requested that Pickett be examined by a psychiatrist. Psychological examinations of witnesses may be ordered in certain cases, but there must be a compelling reason to do so. *People v Graham*, 173 Mich App 473, 478-479; 434 NW2d 165 (1988). Here, defendant has not offered any compelling reason for requesting such an examination. Thus, counsel was not ineffective for failing to request one.

Defendant also refers to other errors he believes the police made during their investigation of this case, but these alleged deficiencies cannot be attributed to defense counsel. Thus, they do not support defendant’s ineffective assistance of counsel argument.

Defendant lastly argues that defense counsel was ineffective for not moving to suppress Pickett’s identification at a pretrial lineup on the ground that counsel was not present to ensure that the lineup was conducted fairly. Again, the record does not support defendant’s argument. On the contrary, the officer in charge specifically testified at trial that he arranged to have an on-call attorney present before the lineup was conducted. Thus, there is no merit to this argument.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ David H. Sawyer
/s/ Jane E. Markey